Syarikat Jeleta Bumi Sdn Bhd & Anor v Nadarajah a/l Ramasamy & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S6–22–170 OF 2002
AZMEL J
26 FEBRUARY 2003

Civil Procedure *— Injunction — Interim injunction — Interim injunction to restrain plaintiffs from demolishing the defendants' houses — Whether there were bona fide issues to be tried — Where the balance of convenience lied — Whether defendants can be adequately compensated*

This was an application by the 67 defendants for an interim injunction to restrain the plaintiffs from demolishing the defendants' houses until this action had been fully disposed off. The first plaintiff claimed to be the beneficial owner of the estate land where the houses stood. The second plaintiff was responsible for managing the estate and such function included all aspects relating to the employment of the plantation workers at the said land. The defendants were occupying the workers quarters built by the previous owner of the land. The defendants had been allowed to stay in the said quarters for several generations, without any interruption by the owner. However, the new owner decided to develop the said land into a housing project. As such, the owner had requested all the defendants to vacate the quarters so that the quarters could be demolished to make way for the development of the said land. The defendants refused to vacate. The plaintiffs filed an action against all the defendants seeking for possession of the premises occupied by the defendants and an injunction to restrain each of the defendants from remaining or continuing in occupation of the said premises. The plaintiffs succeeded in obtaining a judgment in default of appearance against all the defendants except defendants nos 23, 33, 38, 39, 41 and 49. The first plaintiff then informed all the defendants that the first plaintiff would be coming to demolish all the defendants' houses. The demolition exercise was stayed as the defendants had obtained an ex parte injunction. The defendants then filed this application.

Held, granting the defendants' application for an interim injunction with costs:

(1) The claim for proprietary interest should not be summarily dismissed having regard to the fact that the defendants had been occupying the premises for several generations without interference or interruption by the owner. The defendants could not be regarded as trespassers per se. At the very least, they should have been regarded as licensees. As such, taking into consideration the whole facts and circumstances, the defendants had succeeded in establishing the existence of a triable issue which merited a full hearing (see p 548A–B).

(2) The balance of convenience tilted very much more in favour of the defendants who had been in occupation of the premises for a number of generations. To ask them to vacate and cause the said quarters to be demolished would certainly have caused the defendants great hardship, having regard to the fact that they are poor people with no alternative place to stay. They have children and old folk. In the circumstances, it would have only been proper and fair that until the whole matter relating to this case had been fully heard the defendants should be allowed to occupy the said premises (see p 548C–D).

(3) What the defendants needed was alternative accommodation for them and their families. From the facts adduced, the amount of money that the plaintiffs had offered to the defendants was grossly inadequate for the defendants to obtain accommodation elsewhere. Having taken into consideration the total area of the said land (670 acres), the plaintiffs could have easily developed the said land in various phases. There was no need to commence development at the portion occupied by the defendants; *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193 followed (see p 548F–I).

[Bahasa Malaysia summary

Ini adalah permohonan defendan-defendan untuk satu injunksi interim bagi menghalang plaintif-plaintif dari merobohkan rumah defendan-defendan sehingga tindakan ini diselesaikan sepenuhnya. Plaintif pertama menuntut bahawa beliau merupakan pemunya benefisial tanah estet yang mana rumah-rumah tersebut berdiri. Plaintif kedua bertanggungjawab menguruskan estet dan fungsi beliau termasuk segala aspek yang berkaitan dengan pekerjaan ladang di tanah tersebut. Defendan-defendan menghuni rumah pekerja yang dibina oleh pemunya tanah terdahulu. Defendan-defendan dibenarkan menghuni rumah pekerja tersebut selama beberapa generasi, tanpa diganggu oleh pemunya. Akan tetapi, pemunya baru telah membuat keputusan untuk membangunkan tanah sebagai satu projek perumahan. Dengan itu, pemunya baru telah meminta defendan-defendan untuk mengosongkan rumah pekerja tersebut supaya ianya boleh diruntuhkan untuk membolehkan pembangunan tanah tersebut. Defendan-defendan enggan mengosongkan rumah pekerja. Plaintif-plaintif telah memfailkan satu tindakan terhadap semua defendan memohon milikan premis yang dihuni oleh defendan-defendan dan satu injunksi untuk menahan setiap orang defendan daripada terus menghuni premis itu. Plaintif-plaintif berjaya mendapatkan penghakiman ingkar kehadiran terhadap semua defendan-defendan kecuali defendan-defendan 23, 33, 38, 39, 41 dan 49. Plaintif pertama kemudian memberitahu semua defendan-defendan bahawa plaintif pertama akan datang untuk meruntuhkan semua rumah defendan-defendan. Kerja meruntuhkan rumah-rumah

telah digantungkan kerana defendan-defendan telah mendapatkan satu injunksi ex parte. Seterusnya, defendan-defendan telah memfailkan permohonan ini. A

Diputuskan, membenarkan permohonan defendan-defendan untuk injunksi interim dengan kos: B

(1) Tuntutan untuk kepentingan keempunyaan tidak patut ditolak dengan terus terutamanya apabila menimbangkan fakta bahawa defendan-defendan telah menghuni premis tersebut untuk beberapa generasi tanpa gangguan daripada pemunya. Defendan-defendan tidak boleh dianggap sebagai penceroboh per se. Sekurang-kurangnya, mereka patut dianggap sebagai pemegang lesen. Oleh itu, menimbangkan fakta-fakta dan keadaan, defendan-defendan berjaya membuktikan kewujudan isu yang boleh dibicarakan yang memerlukan pendengaran penuh (lihat ms 548A–B). C

(2) Imbangan kemudahan akan memihak kepada defendan-defendan yang telah menghuni premis itu selama beberapa generasi. Untuk meminta mereka mengosongkan rumah pekerja dan membolehkan tempat itu diruntuhkan akan menyusahkan defendan-defendan, memandangkan bahawa mereka merupakan orang yang miskin yang tidak mempunyai tempat tinggal lain. Mereka mempunyai kanak-kanak dan orang tua. Di dalam keadaan ini, ia adalah adil bahawa sehingga perkara yang berkait dengan kes ini didengar, defendan-defendan patut dibenarkan menghuni premis itu (lihat ms 548C–D). D E

(3) Apa yang diperlukan oleh defendan-defendan adalah tempat tinggal yang lain untuk mereka dan keluarga mereka. Daripada fakta-fakta yang dikemukakan, jumlah wang yang ditawar oleh plaintif-plaintif kepada defendan-defendan tidak mencukupi untuk defendan-defendan mendapatkan tempat tinggal lain. Melihat kepada seluruh kawasan tanah itu (670 ekar), plaintif-plaintif boleh membangunkan tanah itu dalam fasa-fasa lain. Plaintif-plaintif tidak perlu membangunkan bahagian yang dihuni oleh defendan-defendan; *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193 diikut (lihat ms 548F–I).] F G

Notes

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For cases on interim injuctions, see 2 *Mallal's Digest* (4th Ed, 2001 Reissue), paras 2628–2670.

Cases referred to

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Chellapa a/l K Kalimuthu (suing as public officer of Sri Maha Mariamman Temple, Hicom, Shah Alam, Selangor v Sime UEP Properties Bhd [1998] 1 MLJ 20 (refd)

Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors [1995] 1 MLJ 193 (folld)

Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors v Poh Swee Siang [1987] 2 MLJ 611 (refd)

Legislation referred to

Rules of the High Court 1980 O 13 r 4, (2), O 45, r 3(2), O 83

Specific Relief Act 1950 s 7

R Sivarasa (*Charles Hector* and *Shamini Thiruselvam* with him) (*Charles Hector & Co*) for the applicants/defendants.

Leong Wai Hong (*Elaine Yap* and *Claudia Cheah* with him) (*Skrine*) for the respondents/plaintiffs.

Azmel J: This is an application by defendants Nos 3, 14, 18, 23, 26, 33, 38, 39, 41, 42, 48, 49, 50, 51, 52, 54, 55, 56, 57, 58, 59, 60, 63, 64 and 66 for an interim injunction to restrain the first and second plaintiffs and their agents from demolishing the houses and public facilities at Ladang Bukit Tinggi where the defendants are presently staying until this action has been fully disposed off.

It is essential to narrate the brief background of this case in order to understand and to give a proper perspective of this application. They are as follows. The first plaintiff claimed to be the beneficial owner of two lots of land with a total area of about 670 acres (Geran No 24138 and Geran No 43531) in the Mukim and District of Klang, Selangor. It was an agricultural estate called Ladang Bukit Tinggi. The current registered owner of the said land was Highlands and Lowlands Bhd. Previous to that, the said land was owned by Barlow Boustead. The second plaintiff was responsible for managing the estate and such function included all aspects relating to the employment of the plantation workers at the said land.

The 67 defendants were occupying the workers quarters built by the previous owner of the estate. The defendants had been allowed to stay in the said quarters for several generations, without any interruption by the owners. However, quite recently the new owner of the said land decided to develop the said land into housing project. As such the owner had requested all the defendants to vacate the quarters so that the quarters could be demolished to make way for the development of the said land. But the defendants refused to vacate. As such, on 18 February 2002, the plaintiffs filed an action against all the defendants seeking for:

(i) possession of the premises occupied by the 67 defendants; and

(ii) an injunction to restrain each of the defendants from remaining or continuing in occupation of the said premises.

On 26 March 2002, the plaintiffs succeeded in obtaining a judgement in default of appearance against all the defendants except defendants Nos 23, 33, 38, 39, 41 and 49.

By a letter dated 5 April 2002, the first plaintiff informed all the defendants that the first plaintiff would be coming on 9 April 2002 to demolish all the defendants' houses. The demolition exercise was stayed as the defendants had obtained an ex parte injunction from the KL High Court (Civil 2) on 8 April 2002 which was valid and lawful until 15 April 2002. On 16 April 2002, the defendants filed this injunction to restrain the plaintiffs from demolishing the defendants' houses (encl 96).

In an application for an injunction, the principles that the court has to follow are clearly laid down in the Court of Appeal case of *Keet Gerald Francis Noel John v Mohd Noor bin Abdullah & Ors* [1995] 1 MLJ 193, where Gopal Sri Ram JCA said at pp 195-196:

> A judge hearing an application for an interlocutory injunction should:
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> (1) ask himself whether the totality of the facts presented before him disclosed a bona fide serious issue to be tried. He must refrain from making any determination on the merits of the claim or any defence to it and identify with precision the issues raised and decide whether they are serious enough to merit a trial. If he finds that no serious question is disclosed, the relief should be refused. If, however, he finds that there are serious questions to be tried, he should move on to the next step of his inquiry;
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> (2) having found that an issue has been disclosed that requires further investigation, he must consider where the justice of the case lies. He must take into account all relevant matters, including the practical realities of the case before him and weigh the harm the injunction would produce by its grant, against the harm that would result from its refusal; and
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> (3) the judge must have in the forefront of his mind that the remedy that he is asked to administer is discretionary, intended to produce a just result for the period between the date of the application and the trial proper and to maintain the status quo. It is a judicial discretion capable of correction on appeal. A judge should briefly set out in his judgment the several factors that weighed in his mind when arriving at his conclusion.

It was therefore only appropriate for me to consider this application on the basis of the principles as laid out above in *Keet Gerald.*

Based on the abovesaid principles, the first matter to be determined was whether the defendants/applicants have succeeded in disclosing a bona fide serious issue to be tried. Before me, the defendants have put forward four bona fide issues to be tried.

Firstly, the defendants contended that the plaintiffs had contravened the provisions of O 45 of Rules of the High Court 1980 when enforcing the judgment for possession of the immovable property. Under O 45 r 3(2), leave of the court must be obtained first except where the judgment was made in a charge action to which O 83 applies. The instant case is not a charge action and as such the exception to the rule does not apply. In this case, the plaintiffs issued letters to all the defendants informing them of their intention to demolish the houses occupied by the defendants without first obtaining leave of the court as required under O 45 r 3(2) of the Rules of the High Court 1980. Therefore such action is unlawful.

Secondly, the plaintiffs also had failed to comply with the provision of O 13 r 4 of the Rules of the High Court 1980, concerning execution of judgments obtained by default. Rule 4(2) of O 13 states:

> Where there is more than one defendant, judgment entered under this rule shall not be enforced against any defendant unless and until judgment for possession of the immovable property has been entered against all the defendants.

It was argued by the defendants that no judgment in default had been obtained against defendants Nos 23, 33, 38, 39, 41 and 49. As such it was premature to proceed with the execution of the judgment in default against the rest of the defendants.

In reply, the plaintiffs contended that the rules of civil procedure cannot form the basis of an issue of trial. Furthermore, the plaintiffs' counsel contended that in this country the common law remedy of self help is still available and quoted the judgment of Hashim Yeop A Sani SCJ (as he then was) in the case of *Trustees of Leong San Tong Khoo Kongsi (Penang) Registered & Ors v Poh Swee Siang* [1987] 2 MLJ 611 where he stated in his judgment as follows at p 617:

> ... s 7 of the Specific Relief Act 1950 does not exclude the common law remedy of self help. This is a remedy which is always available unless expressly excluded.

In reply, the counsel for the defendants contended that s 7 of the Specific Relief Act 1950 had been amended with the effect that the common law remedy of self help is no longer desirable. He referred to the case of *Chellapa a/l K Kalimuthu (suing as public officer of Sri Maha Mariamman Temple, Hicom, Shah Alam, Selangor v Sime UEP Properties Bhd* [1998] 1 MLJ 20; where the learned High Court judge said at p 29:

> Finally, I think it is desirable to draw the attention of all concerned to s 7(1) of the Specific Relief Act 1950, which forbids forcible evictions without a court order.

Thirdly, the defendants claimed that they and their predecessors are the beneficial owners of the houses and the land they now occupy, and have always enjoyed quiet possession. The houses and land were given to them by the previous owner of the said land, ie Barlow Boustead. The said land was then purchased by Highlands & Lowlands Bhd and finally bought over by the first plaintiff. The defendants were allowed to stay in their houses even after they had retired from working in the estate. Further in the meeting of 19 October 2001 between the plaintiffs and NUPW it was stated in the minutes of meeting that 'the workers will only vacate their quarters upon receiving their new low cost houses from the developer'. And in another meeting of 6 November 2001 it was stated that 'the condition given by the state government is the developer must build alternative housing for the workers before they could vacate their quarters'. Hence with such evidence, the defendants have shown that they have a claim to proprietary interest in the said land. This is a triable issue which should not be summarily dismissed without a trial.

Based on the circumstances as mentioned above, I was quite satisfied that the defendants had succeeded in showing the existence of a triable issue to be tried. In my view, their claim for proprietary interest should not be summarily dismissed having regard to the fact that they had been occupying the premises for several generations without interference or interruption by the owners. One fact is indisputable, that is the defendants cannot be regarded as trespassers per se. At the very least they should be regarded as licensees. As such, taking into consideration the whole facts and circumstances of this case, I was of the view that the defendants had succeeded in establishing the existence of a triable issue which merits a full hearing.

I shall now proceed to consider the second step, ie to determine where the justice of the case lies. In my view, the balance of convenience would tilt very much more in favour of the defendants who had been in occupation of the premises for a number of generations. To ask them to vacate and cause the said quarters to be demolished would certainly cause the defendants great hardship, having regard to the fact that they are poor people with no alternative place to stay. They have children and old folks. In the circumstances, it would only be proper and fair that until the whole matter relating to this case has been fully heard, the defendants should be allowed to occupy the said premises. On the other hand, the inconvenience likely to be caused to the plaintiffs would not be as serious as compared to the misery befallen to the defendants. The area occupied by the defendants in relation to a total area of 670 acres of the said land is insignificant. If the plaintiffs really intend to commence development on the said land immediately they are at liberty to do so by starting to develop the rest of the said land without the need to deprive the defendants from occupying their quarters. If the plaintiffs must require the defendants to vacate their premises immediately then the plaintiffs should provide them with alternative accommodation as advised by the State Government of Selangor. I therefore hold the view that the justice of the case is to have the status quo maintained until the conclusion of the plaintiffs' claim in this suit.

As to the question whether compensation in monetary terms could be an alternative remedy, it was very clear to me that what the defendants needed was alternative accommodation for them and their families. From the facts adduced, the amount of money that the plaintiffs had offered to the defendants was grossly inadequate for the defendants to obtain accommodation elsewhere. What the defendants require immediately after vacating their quarters were places for them to stay with members of their families.

On the question whether the defendants were capable of providing sufficient guarantee to the possible loss incurred by the plaintiffs due to the delay in their commencing of the development of the said land as a result of the defendants' injunction, I was of the view that taking into consideration the total area of the said land (670 acres), the plaintiffs could easily develop the said land in various phases. There is no need to commence development at the portion occupied by the defendants. In any case, I was of the strong view that having regard to the whole circumstances of this case, the legal

requirement for the defendants to provide adequate guarantee can surely be tempered with for the sake of justice in favour of the defendants and their families that include children and old folk who are in dire need of places to stay. It is the duty of the court to ensure that in the interim period, no undue hardship should be caused to the defendants and their families merely for want of giving adequate guarantee.

For the reasons as I have stated above, I allowed the defendants' application for an interim injunction with costs.

Defendants' application for an interim injunction granted with costs.

Reported by Peter Ling